

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
And HAAG ENGINEERING CO.

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION FOR ADDITIONAL TIME TO SUBMIT A
REPORT BY GERALD B. WAYTOWICH**

Defendant/Counter-plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as “State Farm Mutual Insurance Company” (“State Farm”), moves the Court for an extension of time in which to submit a disclosure or report regarding Gerald B. Waytowich.¹ As grounds for the motion, State Farm submits the following:

1. Mr. Waytowich is a potential fact and expert witness in this case. Specifically, Mr. Waytowich was employed by Computer Science Corporation (“CSC”) from approximately 2000 through 2005. CSC was a FEMA/NFIP contractor and had substantial responsibilities for NFIP activities, including training, WYO oversight and flood claim reinspections, in connection with Hurricane Katrina.

¹ In light of the straightforward nature of the motion, State Farm respectfully asks this Court to waive the requirement of an accompanying memorandum.

2. If called to testify by State Farm, it is believed that Mr. Waytowich will be a fact witness, and State Farm is in the process of supplementing its initial disclosures and discovery responses to disclose Mr. Waytowich. It is possible, however, that certain portions of Mr. Waytowich's testimony may be considered opinion testimony and thus arguably subject to expert designation, reporting and disclosure requirements.

3. Specifically, Mr. Waytowich will be asked to testify regarding the following subjects:

- a) Whether WYO carriers other than State Farm use valuation tools;
- b) Whether WYO carriers other than State Farm expedited claims;
- c) His opinion regarding the handling and payment of the flood claim on the McIntosh property;
- d) His view on the use of XactTotal in processing and documenting the McIntosh claim;
- e) His reinspection of claims adjusted by State Farm following Hurricane Katrina and whether he saw evidence of paying too much for flood damage; and
- f) FEMA instructions to adjusters to pay for the damage in the surge areas without waiting for determinations as to any wind damage.

4. State Farm has not made any payments to Mr. Waytowich as a retained expert witness (or otherwise) and has no plans to do so.

5. As a former employee of a FEMA/NFIP contractor, Mr. Waytowich may be subject to the agency's *Touhy* regulations concerning testimony of former government employees. *See generally Touhy v. Ragen*, 340 U.S. 462 (1951). State Farm has requested clearance from FEMA/NFIP to allow Mr. Waytowich to submit a report or disclosure compliant with the agency's *Touhy* regulations as well as with Fed. R. Civ. P. 26(a)(2)(B) and is awaiting a response from the agency. It is even possible that the agency may conclude that Mr. Waytowich is not subject to the *Touhy* regulations.

6. At the request of Mr. Waytowich's counsel, State Farm hereby requests that any requirement that Mr. Waytowich submit a signed disclosure or report prior to the expert deadline in this case on March 2, 2010 per Court's Text Order of December 22, 2009, be stayed until FEMA/NFIP advises Mr. Waytowich or State Farm of its position in the matter. *See* 44 C.F.R. § 5.87(c) (FEMA employees are to request a stay of proceedings pending FEMA review of demand for testimony in private litigation).

7. State Farm requests that it be allowed to submit a disclosure or report concerning Mr. Waytowich within ten (10) days after receiving a response from FEMA/NFIP.

This the 2nd day of March, 2010.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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CERTIFICATE OF SERVICE

I, Jeffrey A. Walker, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

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This the 2nd day of March, 2010.

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